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09/833,401	04/11/2001	Roman S. Ferber	HOME 0459 PUS	3432

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EXAMINER

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ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 10/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/833,401
Filing Date: April 11, 2001
Appellant(s): FERBER ET AL.

John R. Buser
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 06/23/2005 appealing from the Office action mailed 06/16/2005.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-25 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

4,962,759	Stern	10-1990
6,183,430	Lin	2-2001
5,245,714	Haraga	9-1993
5,588,161	Barradas	12-1996

5,050,591	Sandrin	9-1991
3,045,254	Cook	9-1962

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-7, 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stern in view of Lin and further in view of Haraga. This rejection is set forth in a prior Office Action, mailed on June 16, 2005.

Claims 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stern in view of Lin and Haraga as applied to claim 1 and further in view of Barrada. This rejection is set forth in a prior Office Action, mailed on June 16, 2005.

Claims 1 and 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin in view of Haraga. This rejection is set forth in a prior Office Action, mailed on June 16, 2005.

Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin in view of Haraga, and further in view of Sandrin. This rejection is set forth in a prior Office Action, mailed on June 16, 2005.

Claims 14-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sandrin in view of Cook. This rejection is set forth in a prior Office Action, mailed on June 16, 2005.

(11) Response to Argument

Applicant has traversed rejections of claims 1-7, 10 and 12 as being unpatentable over Stern in view of Lin and Haraga. The issue at the forefront is

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whether or not Haraga, a whirlpool constitutes non-analogous art. Applicant has cited *In re Oetiker*, stating that Haraga bears no relevance to the Stern and Lin devices. Examiner disagrees. As stated in previous rejections, the entire device relates to hydromassage apparatuses. Applicant has attempted to make a parallel between the combination of the current case, and that of the combination of fasteners from a garden hose and a garment fastener from *In re Oetiker*. The combinations are not parallel. In the case of the fasteners of *In re Oetiker*, the fasteners were being taken from two completely different objects having absolutely no relevance towards each other. The same cannot be said of Stern, Lin and Haraga. As mentioned before they are both hydromassage apparatuses, and their relation in the art can be seen in the cross-referencing between class 601 and class 4 in various prior art. The skilled artisan would look to any hydromassage apparatus having remote controls. As such, it is believed that the combination is proper.

Regarding applicant's traversal of the rejections of claim 11 over Stern, Lin, Haraga, and Barrada, arguments regarding the combination of Haraga with Stern and Lin are addressed above. Barrada is relied upon to teach a recess in order to hold the remote control. The feature of electrical isolation is not directly in the claim language of claim 11, and had been addressed through the combination of Haraga with Stern and Lin.

Regarding applicant's traversal of the rejections of claim 1, and 8-9 over Lin and Haraga, Applicant has mirrored the non-analogous art argument. Please see arguments above.

Regarding claims 12 and 13, see above arguments regarding the analogous nature of Haraga. Furthermore, arguments regarding Sandarin not teaching a remote control are not taken well. Sandrin is relied upon to teach the use of suction cups. The remote control electrically isolated from the controller has been addressed by the combination of Lin and Haraga.

Referring to claims 14-25, Applicant has traversed the rejection over Sandarin in view of Cook. Sandarin teaches channels filled with air or fluid for the purpose of cushioning. Cook teaches it is well known to use foam rubber as cushioning element. Examiner stated it would have been obvious to the skilled artisan to substitute foam rubber for the air or fluid used in Sandrin as an alternative means of providing cushioning. Examiner agrees that it would not be desirable to provide Sandarin with rigid elements, however Examiner has only cited Cook as teaching foam rubber as an alternative cushioning means. Providing foam rubber would not inhibit the intended purpose which is to provide a **separate chamber** with air that causes bubbles to form when the mat is submerged in water. The 'cushioning chamber' is hermetically sealed and separate from the 'massage chamber'. Substitution of foam rubber as a cushioning element does not impede use of the device as it may still be submerged in water, laid upon by a user, removed and rolled up due to the compressible nature of foam rubber. Applicant has stated on page 13 of the arguments that Sandrin teaches away from using a rigid material such as flexible blocks or foam rubber. Examiner agrees Sandrin teaches away from using rigid material, but foam rubber **cannot** be construed as a rigid

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material, especially in light of the specification of Cook which states that the foam rubber is compressible. For this reason it is believed that the rejection is proper.


For the above reasons, it is believed that the rejections should be sustained.


Respectfully submitted,

Fenn Mathew

fcm

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